

803 KAR 2:122. Application for extension of abatement.

RELATES TO: KRS 338.141(2)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: The Commissioner of the Department of Workplace Standards is empowered to extend abatement periods established pursuant to KRS 338.141(2) and 803 KAR 2:120. The function of this administrative regulation is to detail the form of the application for extension of abatement, steps necessary to make application, content of the application, form and timing for the ruling of the Commissioner of the Department of Workplace Standards on the application, and, appeal available to the parties adversely affected by the decision on the application.

Section 1. An employer may make application for extension of abatement date with the Commissioner of the Department of Workplace Standards or his designee, the Director of Compliance, when the employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed due to factors reasonably beyond his control. Where application for extension of abatement is made, said application shall be filed not later than the close of the day on which abatement was originally required. A later filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

Section 2. An application for extension of abatement may be in writing or may be made orally where time does not permit a writing. Where application for extension of abatement is made orally a written application shall follow said oral request within three (3) working days. The application shall include the following information:

- (1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
- (2) The specific additional abatement time necessary in order to achieve compliance.
- (3) The reasons such additional time is necessary, including the unavailability of professional and technical personnel or materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
- (4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

Section 3. The Commissioner of the Department of Workplace Standards or his designated representative, the Director of Compliance, shall rule on the application for extension of abatement within three (3) days of receipt of same.

(1) Where extension is granted, amended citation shall issue and the employer shall post the amended citation at or near the same location as the original citation as under 803 KAR 2:125. Adversely affected employees may appeal pursuant to KRS 338.141(1) and rules of the KO-SHRC.

(2) Where extension is denied, adversely affected employers shall have right of appeal as under KRS 338.141(1) and rules of the KOSHRC.

Section 4. Where jurisdiction of the Review Commission has expired, the Commissioner of the Department of Workplace Standards shall again assume authority to modify abatement under KRS 338.141(2). (5 Ky.R. 833; Am. 1067; eff. 6-6-79; TAm eff. 8-9-2007; TAm eff. 9-8-2011.)